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JAMES R. BROWNING, Cle

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 150.

DOUGLAS McCRARY et al.

v.

ALADDIN RADIO INDUSTRIES, INC.,
and
ALADDIN INDUSTRIES, INC.

MEMORANDUM REPLY BRIEF

In Support of Petition for Writ of Certiorari.

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Petitioners respectfully request that the following reply be filed to the "Brief for Respondents in Opposition:"

I.

Respondents Admit That Under the Law of Tennessee, "If an Injunction Is Void, It May Be Violated With Impunity."

This quoted admission appears on page 9 of the "Brief for Respondents in Opposition." It accords both with

the initial understanding of the parties in this proceeding and with traditional Tennessee practice and authorities.[1]

Thus the ultimate issue that emerges in this proceeding is whether the injunction of the Tennessee Chancellor was in fact void. Clearly, it was.

We respectfully suggest that whether a decree of the Tennessee Chancellor—affecting and regulating peaceful picketing in a labor dispute at an interstate industry and prohibiting the exercise of a contractual privilege to respect such picketing—is to be given any effect, or is to be treated as "invalid" or void, is not for Tennessee to decide.[2] The preemptive scheme for regulation of such activities as enacted by Congress and applied by the decisions of this Court governs that issue.[3] Such was the effect of this Court's prior opinion and judgment. 355 U. S. 8.[4]

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[1] This admission explains respondents' inability to cite cases in Tennessee to the contrary. Neither *Weidner v. Friedman*, 126 Tenn. 677, nor *Nashville Corp. v. United Steelworkers of America*, 187 Tenn. 440 (to which respondents have referred) deals with a decree of a Tennessee Court that was deemed void. In the one, the decree was found to be erroneous because the Appellate Court felt that the Chancellor should have exercised forbearance in the exercise of equity powers (Cf. page 6, Brief for Respondents in Opposition), *and* because relief was barred by laches; in the other, no challenge to the jurisdiction of the Chancellor over the subject matter was involved—only a questioning of his exercise of equity authority as "irregular or erroneous."

The Court of Appeals' opinion itself, while not entirely clear on this point, apparently recognized that "a void injunction binds no one. . . ." (See, Opinion, at page 31 of the Petition herein.)

[2] *Amalgamated Ass'n, etc. v. WERB*, 340 U. S. 383, 398.

[3] Otherwise, the "diversities and conflicts" which Congress sought to avoid would be inevitable. *Garner v. Teamsters*, 346 U. S. 485, 490.

[4] See, also, *Teamsters v. Kerrigan*, 353 U. S. 968, and related decisions of this Court cited in "The Reasons for Granting the Writ" (page 13 of the Petition herein).

A basic error here has been the Tennessee Court's failure to find the injunction void as a matter of overriding federal law. That failure largely derives from the State Court's untenable attempt to distinguish **Kerrigan.**[5] It reflects that Court's intransigent refusal to concede that the National Labor Relations Act as amended has pre-empted this case from State jurisdiction, even though its earlier refusal so to concede has been vacated and remanded by this Court.

II.

The injunction here is no less void because it was temporary and not final. The essence of the doctrine of preemption is that federal rights be protected against encroachment by State Courts while those rights may yet be effective.[6]

When, as here, State law admittedly permits a void injunction to be violated with impunity; and when such a State Court injunction is void because it invades the

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[5] Our Memorandum Reply Brief in No. 976, October Term, 1956 (Appendix A thereto), detailed the substantial identity between *Kerrigan* and the present case. We noted there (page 6): "The present case and the *Kerrigan* case are substantially identical. The same Local 327 and its members, and the same collective bargaining provisions insuring the right to respect peaceful picket lines, are involved in both cases. In both there has been the same invasion by the State Chancellor of an area pre-empted by Congress.

"The same Tennessee Chancellor issued the challenged orders in both cases, under the identical misconception in both that (by enforcement of a Tennessee policy applicable to common carriers) he could forbid, or impose punishment for, peaceful picketing in an interstate industry."

[6] Almost universally in labor disputes, the preliminary proceedings for all practical purposes are crucial and determinative.

Petitioners have made no agreement, as is indicated in footnote 2, page 2, Brief for Respondents in Opposition, for continuing the injunction suits "in *statu quo*," or otherwise.

field of peaceful picketing in industries affecting commerce which Congress "has closed to State regulation," a judgment for contempt of that injunction "cannot stand," and it is immaterial that the void decree is a temporary injunction or restraining order. **Amalgamated Assn., etc. v. WERB**, 340 U. S. 383, 394, 399.

III.

In summary, Tennessee has simply refused, once more, to apply federal law of preemption by which this suit has been withdrawn from the State's power.

Kerrigan supported the granting of the first writ in this proceeding. It likewise, now, we respectfully submit, again supports the granting of the writ and justifies summary disposition.

IV.

There is, of course, other substantial error in the result below of a degree and kind that would authorize review by this Court. Respondents admit (and the Court of Appeals assumes) that a void injunction in Tennessee may in general be disregarded with impunity. They both deny, however, that **this** particular injunction could be so disregarded by these petitioners. If, as we have shown, this injunction is void (by virtue of federal law), to refuse petitioners the right to disregard it would amount to a novel and unequal application of Tennessee procedure and law to them in violation of the Constitution's requirement of fairness and equal treatment. **National Ass'n for the Advancement of Colored People v. State of Alabama**, 357 U. S. 449.

V.

The writ of certiorari should be granted and the judgment of the Court of Appeals of Tennessee reversed.

Respectfully submitted,

By.....

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Of Counsel.

Dated: August ..., 1959.

Certificate of Service.

I, Jerome A. Cooper, one of the attorneys for petitioners herein, and a member of the Bar of the Supreme Court of

the United States, hereby certify that a copy of the foregoing Memorandum Reply Brief in Support of Petition for Writ of Certiorari was this day served on adverse parties herein in accordance with Supreme Court Rules 21 (1) and 33, by depositing same in the U. S. Mails at Birmingham, Alabama, with first class postage prepaid, addressed to counsel of record at their post office address as follows:

Waller, Davis & Lansden,
American Trust Building,
Nashville, Tennessee.

.....

Dated August ..., 1959.